

3ccrruis

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1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK
2 -----x

3 UNITED STATES OF AMERICA

4 v. 02 Cr. 1290 (RMB)

5 HECTOR RUIZ,

6 Sentence

7 Defendant.
7 -----x

8 New York, N.Y.
9 December 12, 2003
10 3:15 p.m.

11 Before:

12 HON. RICHARD M. BERMAN

13 District Judge

14 APPEARANCES

15 JAMES B. COMEY
16 United States Attorney for the
17 Southern District of New York
18 One St. Andrew's Plaza
19 New York, N.Y. 10007
20 MARC L. MUKASEY ✓
21 LAUREN GOLDBERG
22 Assistant United States Attorneys

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26 ROBERT VAN NORMAN WHITFORD
27 Interpreter (Spanish)

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1 (Case called)

2 THE COURT: Good afternoon. We are on today for
3 sentencing. We have a Spanish language interpreter. I would
4 ask Mr. Ruiz if he is able to understand these proceedings with
5 the help of the interpreter.

6 THE DEFENDANT: (Through the interpreter) Yes.

7 THE COURT: Let me say at the outset, before I deal
8 with the legal issues that you all have raised, that there are
9 certain constraints that apply to the sentencing. One is, of
10 course, the most important, which is the jury's determination
11 in this case. We will talk about that a little bit further.
12 In addition, there are the sentencing guidelines which apply in
13 all criminal cases. And there is a statutory minimum here as
14 well that applies, which I am sure counsel is aware of.

15 Before I start, I would ask counsel if any
16 consideration has been given to what are called the safety
17 valve provisions of the sentencing guidelines, which under
18 appropriate circumstances, if the conditions are met, allow
19 sentencing below the statutory minimum.

20 MR. MUKASEY: Judge, I want the record to reflect that
21 before the trial of Hector Ruiz and the other defendants in
22 this case I raised the issue of the safety valve possibility
23 with Alex Eisemann, prior counsel to Mr. Ruiz. I invited Mr.
24 Ruiz, through counsel, to come in and safety valve and also
25 suggested to Mr. Eisemann that that would be an avenue

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1 available to reduce his sentence even if convicted after trial.

2 So from the government's perspective, that has been
3 raised. There was never any response either from Mr. Eisemann
4 other than an indication that Mr. Ruiz wasn't going to do that
5 prior to trial, and I haven't heard anything post-trial on that
6 subject.

7 THE COURT: I am raising it just to have it ~~clear~~ so
8 that we have a clear record as to the defense position and the
9 government's position.

10 MR. SEIDLER: Your Honor, I have discussed the issue
11 with Mr. Ruiz. It is my firm conviction that Mr. Ruiz is not
12 going to meet the fifth criteria to the government's
13 satisfaction or anything even close to it. Therefore, I did
14 not pursue such a meeting.

15 THE COURT: I just wanted people to be aware of the
16 possibility.

17 Let's then talk about the legal issues that have been
18 raised here. By letter dated November 14, 2003, the defense
19 objects to various paragraphs in the pre-sentence investigation
20 report.

21 Incidentally, with respect to that, and before I go
22 any further, the pre-sentence investigation report, as I am
23 sure you are aware, incorrectly refers in several places not to
24 Mr. Ruiz but to one of the other persons who was charged in
25 this offense, Mr. Duque. My office called them -- that is an